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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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| THE PEOPLE,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>ADRIAN PARTIDA MARTINEZ,<br><br>Defendant and Respondent. | H030579<br>(Santa Clara County<br>Super. Ct. Nos. CC585195, C9948337,<br>CC086194 ) |

Defendant Adrian Martinez was convicted by plea in three different felony cases. He was given consecutive prison sentences and ordered to pay certain fines and fees. On appeal, defendant asserts two sentencing errors: (1) he challenges the $6,400 restitution fund fine imposed in one case, and (2) he argues for additional sentence credits in another. We reject both of defendant's challenges and we affirm.

## BACKGROUND

The criminal cases against defendant that are the subject of this appeal arose from three separate incidents, all charged in Santa Clara County.

***The Three Cases: Facts and Charges***

*Case Number C9948337 (The 1999 Weapons Case)*

The first case arose out of an incident that took place in October 1999, when San Jose police officers stopped defendant, who was driving with a suspended license. A search of his car revealed a short-barreled shotgun. Defendant was charged in a five-count felony complaint with various offenses, including possession of an illegal weapon in violation of section 12020, subdivision (a), of the Penal Code.[1] The complaint also alleged a prior felony strike conviction. (§§ 667, subds. (b)-(i), 1170.12.)

*Case Number CC086194 (The 2000 Registration Case)*

In September 2000, San Jose police officers attempted to serve an arrest warrant at the address listed for defendant, who is a registered sex offender. The officers learned that defendant no longer lived there. Defendant was charged by felony complaint with failure to inform law enforcement of his new location, in violation of section 290, subdivision (g)(2). The complaint also alleged both the prior felony strike conviction and an on-bail enhancement. (§§ 667, subds. (b)-(i), 1170.12, 12022.1.)

*Case Number CC585195 (The 2005 Rape Case)*

In March 2005, defendant went to the victim's home in Turlock and kidnapped her. Defendant drove her to a motel in San Jose, where he raped her. He was charged in a two-count felony complaint with rape and kidnap. (§§ 261, subd. (a)(2), 209, subd. (b)(1).) As before, the complaint contained a prior felony strike allegation. (§§ 667, subds. (b)-(i), 1170.12.)

***Convictions by Plea***

Defendant eventually entered pleas in all three cases. In September 2005, defendant entered an unconditional plea of nolo contendere in the registration case. In

[1] Further unspecified statutory references are to the Penal Code.

July 2006, while on trial for the rape and kidnap, defendant entered negotiated guilty pleas in that case and in the weapons case.

In the rape case, defendant pleaded guilty to both charged counts: rape by force or fear and kidnapping to commit a sexual offense. (§§ 261, subd. (a)(2), 209, subd. (b)(1).) He also admitted the strike allegation. (§§ 667, subds. (b)-(i), 1170.12.)

In the weapons case, defendant pleaded guilty to count 1, thereby admitting felony possession of an illegal weapon. (§ 12020, subd. (a).) As before, he also admitted the strike. (§§ 667, subds. (b)-(i), 1170.12.) The People agreed to dismissal of the other four counts of the weapons case. The negotiated prison sentence was 16 months, to be served consecutively to defendant's sentence in the rape case.

Before accepting defendant's guilty pleas in the rape case and the weapons case, the court advised him: "There are certain fines and fees associated with these cases." As relevant here, the court stated: "There is a mandatory restitution fund fine of no less that $200 and no more than $10,000." The court further observed: "I have given you the minimum and maximum, but the sentencing judge will have discretion to set the fines and fees that are appropriate based upon the law." Defendant confirmed that he understood the fines and fees.

***Sentencing***

In August 2006, defendant was sentenced in all three matters.

In the rape case, in accord with the negotiated disposition, the trial court imposed consecutive sentences totaling 16 years. Defendant was credited with 603 days for time served: 525 days actual time, plus 78 days conduct credit. As recommended in the probation report, the court imposed a restitution fund fine of $6,400. (§ 1202.4.) The court also imposed an equivalent parole revocation fine, which it suspended. (§ 1202.45.)

In the weapons case, the trial court likewise imposed the agreed prison sentence, which was 16 months. Defendant was credited with 25 days for time served: 22 days

actual time, plus three days conduct credit. The court imposed a $200 restitution fund fine.

In the registration case, in which defendant had entered an unconditional plea, the court sentenced him to 16 months, with no sentence credits. The court added an on-bail enhancement of two years, and it imposed a $200 restitution fund fine.

***Appeal***

In September 2006, defendant filed an amended notice of appeal in all three cases. In his briefs on appeal, defendant asserts two claims of error. First, he challenges the $6,400 restitution fund fine imposed in the rape case. Second, defendant argues that he is entitled to additional sentence credits in the weapons case. The People dispute both contentions.

## DISCUSSION

### I. Restitution Fund Fine

In his first argument on appeal, defendant asserts that imposition of the $6,400 restitution fund fine violated his plea bargain. He asks us to reduce the fine to $200, the statutory minimum, under the authority of *People v. Walker* (1991) 54 Cal.3d 1013 (*Walker*).

Because the facts surrounding defendant's change of plea are not in dispute, we review the question independently. (Cf., *People v. Cromer* (2001) 24 Cal.4th 889, 893-894 [mixed question of fact and law].)

As defendant acknowledges, this court has rejected the same arguments that he presents here, in at least three recent published cases: *People v. Dickerson* (2004) 122 Cal.App.4th 1374; *People v. Knox* (2004) 123 Cal.App.4th 1453 [majority opinion]; and *People v. Sorenson* (2005) 125 Cal.App.4th 612.

More recently, the California Supreme Court adopted the same view, in *People v. Crandell* (2007) 40 Cal.4th 1301, 1309 (*Crandell*). In *Crandell*, the court reaffirmed the

point made in *Walker* that " 'two related but distinct legal principles' … may apply when a restitution fine is erroneously imposed." (*Crandell*, at p. 1307, quoting *Walker*, *supra*, 54 Cal.3d at p. 1020.) "The first principle concerns the necessary advisements whenever a defendant pleads guilty, whether or not the guilty plea is part of a plea bargain." (*Walker*, at p. 1020.) "The second principle is that the parties must adhere to the terms of a plea bargain." (*Ibid.*)

In *Crandell*, "only the second type of error" was "in question." (*Crandell*, *supra*, 40 Cal.4th at p. 1308.) Assessing that claim of error, the high court found no violation of the plea bargain. (*Id*. at p. 1309.) As the court noted, "the trial court, before taking defendant's plea, accurately advised him he would 'have to pay a restitution fund fine of a minimum of $200, a maximum of $10,000' and ascertained that the prosecution had not made 'any other promises' beyond that defendant would be sentenced to 13 years in prison." (*Ibid.*, fn. omitted.) "These facts distinguish the case from *Walker*," the court concluded. (*Id*. at pp. 1309-1310.)

The same is true here. The trial court properly advised the defendant in this case that a mandatory restitution fund fine of up to $10,000 would be imposed. (See *Crandell*, *supra*, 40 Cal.4th at pp. 1305, 1309.) The court also sought and received defendant's assurance that no promises had been made to him to induce his plea, other than those concerning his prison sentence. (*Id*. at p. 1305; cf., *id.* at p. 1312, conc. opn. of Baxter, J. ["if a trial court has failed … to ask specifically about 'other promises' before imposing a substantial fine, *that fact alone* should not require an appellate court to invalidate the fine. I do not interpret the majority opinion to hold otherwise"].)

As the high court observed in *Crandell*, "the parties to a criminal prosecution are free, within such parameters as the Legislature may establish, to reach any agreement concerning the amount of restitution … they find mutually agreeable." (*Crandell*, *supra*, 40 Cal.4th at p. 1309.) They can do so either "by specifying the amount or by leaving it to the sentencing court's discretion…." (*Ibid*.; see also, e.g., *People v. Knox*, *supra*, 123

Cal.App.4th at p. 1461; *People v. Dickerson, supra,* 122 Cal.App.4th at p. 1385.) In *Crandell*, the parties effectively agreed to leave the amount of the fine to the sentencing court's discretion. (*Crandell,* at p. 1309.) In this case, the parties did the same thing. Thus, there was no violation of the plea bargain.

Under the controlling authority of *Crandell*, and based on our prior decisions in *Knox*, *Dickerson*, and *Sorenson*, we reject defendant's challenge to the $6,400 restitution fund fine imposed in connection with his conviction by plea for kidnap and rape.

**II. Sentence Credits**

Defendant next argues that the trial court erred when it awarded him only three days of conduct credit in the weapons case, i.e., 15 percent of the 22 days he spent in actual pre-sentence custody. Because the offense in that case is not a violent felony, defendant asserts, his pre-sentence credits should have been calculated under section 4019 and not reduced by applying section 2933.1.

To provide the proper framework for assessing that argument, we first describe pre-sentence credits generally. We then summarize section 2933.1. Finally, we apply that provision to the case at hand.

***A. General Principles***

*1. Custody Credits*

By statute, convicted criminal defendants are entitled to pre-sentence custody credits. (§ 2900.5.) Defendants are "entitled to credit against the term of imprisonment for [all] days spent in custody before sentencing …." (*People v. Johnson* (2002) 28 Cal.4th 1050, 1053.)

*2. Conduct Credits*

Defendants also are permitted credits for good conduct during pre-sentence custody. (§ 4019.) In the words of our state's high court: "In general, a defendant receives what are commonly known as conduct credits toward his term of imprisonment for good behavior and willingness to work during time served prior to commencement of

sentence." (*People v. Thomas* (1999) 21 Cal.4th 1122, 1125.) Pre-sentence conduct credits are known by other labels, including "good behavior credits" (*People v. Buckhalter* (2001) 26 Cal.4th 20, 29); "good time/worktime credits" (*People v. Palacios* (1997) 56 Cal.App.4th 252, 258); and "good/work credits" (*People v. Culp* (2002) 100 Cal.App.4th 1278, 1282). (See *In re Reeves* (2005) 35 Cal.4th 765, 768, fn. 4.) "The presentence credit scheme, section 4019, focuses primarily on encouraging minimal cooperation and good behavior by persons temporarily detained in local custody before they are convicted, sentenced, and committed on felony charges." (*People v. Buckhalter*, at p. 36.)

*3. Credit Limitations*

Various statutes restrict pre-sentence credits. (*People v. Buckhalter, supra,* 26 Cal.4th at p. 31.) As relevant here: "For specified felons, section 2933.1 limits presentence conduct credits authorized under section 4019." (*People v. Cooper* (2002) 27 Cal.4th 38, 43.)

***B. Section 2933.1***

At issue in this case is section 2933.1.[2] That provision affects "any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 …." (§ 2933.1,

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[2] Section 2933.1 provides in full as follows:

"(a) Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933.

(b) The 15-percent limitation provided in subdivision (a) shall apply whether the defendant is sentenced under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2 or sentenced under some other law. However, nothing in subdivision (a) shall affect the requirement of any statute that the defendant serve a specified period of time prior to minimum parole eligibility, nor shall any offender otherwise statutorily ineligible for credit be eligible for credit pursuant to this section.

(c) Notwithstanding Section 4019 or any other provision of law, the maximum credit that may be earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, following arrest and prior to placement in the custody of the Director of Corrections, shall not

subd. (a).) The rape and kidnapping committed by defendant are both among the offenses listed. (§ 667.5, subd. (c)(3) & (14).) Defendant's weapons offense is not.

*1. Purpose*

Section 2933.1 "sanctions violent crime by limiting … credits available under other sections." (*People v. Thomas*, *supra*, 21 Cal.4th at p. 1126.) Its "manifest purpose" is "to limit the presentence conduct credits for violent felons." (*People v. Ramos* (1996) 50 Cal.App.4th 810, 816.) "The limitation on conduct credits for defendants convicted of violent felonies represents a legitimate policy decision by the Legislature to provide greater protection to the public from dangerous offenders who might otherwise be paroled at an earlier date." (*People v. Garcia* (2004) 121 Cal.App.4th 271, 277.)

*2. Operation*

Section 2933.1 "does not *authorize* the award of presentence conduct credits. It simply *limits* the presentence conduct credits authorized by section 4019." (*People v. Cooper*, *supra*, 27 Cal.4th at p. 46, italics added.) Pursuant to that limitation, the "maximum credit that may be earned" by those subject to the statute "shall not exceed 15 percent of the actual period" spent in custody before going to prison. (§ 2933.1, subd. (c).) "Conduct credits do not become an issue until and unless a person is convicted." (*People v. Sylvester* (1997) 58 Cal.App.4th 1493, 1496.) The provision thus "is triggered based on the fact of a certain type of conviction." (*Id.* at p. 1497.)

Section 2933.1 "limits a violent felon's conduct credits irrespective of whether or not all his or her offenses come within section 667.5." (*People v. Ramos*, *supra*, 50 Cal.App.4th at p. 817.) In that regard, the statute "applies to the offender not to the offense…." (*Ibid.*)

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exceed 15 percent of the actual period of confinement for any person specified in subdivision (a).

(d) This section shall only apply to offenses listed in subdivision (a) that are committed on or after the date on which this section becomes operative."

***C. Application***

To the extent that we are called upon to construe section 2933.1, our review is de novo: issues of statutory interpretation present questions of law for our independent review. (See, e.g., *People v. Teroganesian* (1995) 31 Cal.App.4th 1534, 1537 [interpretation of section 1209].)

Section 2933.1 is part of our state's felony sentencing system, which includes "separate and independent credit schemes for presentence and postsentence custody." (*People v. Buckhalter, supra,* 26 Cal.4th at p. 30.) Those two independent schemes feature "disparate goals" and "distinct purposes … for awarding term-shortening credits." (*Id.* at p. 36.) This case implicates section 2933.1, subdivision (c), which "concerns … *presentence credits* under section 4019." (*In re Reeves, supra,* 35 Cal.4th at p. 774.)

*1. Section 2933.1 was correctly construed in Ramos.*

As explained above, section 2933.1, subdivision (c), was construed in the *Ramos* case as limiting "a violent felon's conduct credits irrespective of whether or not all his or her offenses come within section 667.5." (*People v. Ramos, supra,* 50 Cal.App.4th at p. 817.) The statute thus "applies to the offender not to the offense…." (*Ibid.*)

That construction has received widespread approbation. As the California Supreme Court observed in a 2005 decision, *In re Reeves,* the holding in *Ramos* "makes sense in the context in which the court spoke – that of presentence credits authorized by section 4019 and limited by section 2933.1 (c)." (*In re Reeves, supra,* 35 Cal.4th at p. 775.) The *Reeves* court nevertheless rejected the People's contention that *Ramos* "disposes of the different issue" before it.[3] (*Ibid.*)

[3] *In re Reeves* involved subdivision (a) of section 2933.1. (*In re Reeves, supra,* 35 Cal.4th at p. 768.) The question there was "whether section 2933.1(a) restricts petitioner's ability to earn worktime credit against a concurrent sentence for a nonviolent offense." (*Ibid.*) The court held "that section 2933.1(a) limited to 15 percent the rate at which petitioner could earn worktime credit as long as he was serving the term for the violent offense, even though the concurrently punished nonviolent offense would not by

As the high court also recognized in *Reeves*: "All other published decisions addressing the same issue about presentence credits have followed *Ramos*." (*In re Reeves, supra,* 35 Cal.4th at p. 774, citing *People v. Duran* (1998) 67 Cal.App.4th 267, 270; *People v. Aguirre* (1997) 56 Cal.App.4th 1135, 1141; *People v. Palacios*, *supra*, 56 Cal.App.4th at p. 256; cf., *People v. McNamee* (2002) 96 Cal.App.4th 66, 73 [citing *Ramos* with approval, but applying § 2933.2].) Later cases have likewise given their imprimatur to the holding in *Ramos*. (See *People v. Florez* (2005) 132 Cal.App.4th 314, 319, fn. 13; cf., *In re Phelon* (2005) 132 Cal.App.4th 1214, 1221 [holding that *Ramos* does not apply where punishment for the violent felony is stayed under § 654].) We now add our approval as well.

*2. Ramos governs here.*

Defendant seeks to avoid *Ramos*. He points out that his pre-sentence confinement on the weapons charges predated his arrest for the violent felonies by more than five years. "Thus," he argues, "the convictions for the violent offenses did not occur in a proceeding to which the presentence custody is attributable." In support of that argument, he quotes a passage from *In re Reeves* stating that the statutory "limitation on presentence credit takes effect only when a person who has served 'an actual period of [presentence] confinement' [citation] becomes, by subsequent conviction of a violent offense in a proceeding to which the presentence custody is attributable, a 'person specified in subdivision (a)'…." (*In re Reeves*, *supra*, 35 Cal.4th at p. 776, quoting § 2933.1, subd. (c).)

Defendant's reliance on *In re Reeves* is misplaced.

For one thing, the high court in *Reeves* was concerned with section 2933.1, subdivision (a), as it relates to *post-conviction* credits. (*In re Reeves, supra,* 35 Cal.4th at

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itself have caused the section to apply; but once petitioner completed the term for the violent offense he became prospectively eligible to earn credit at a rate unrestricted by the section." (*Id.* at p. 769.)

pp. 768-769.) Its discussion of section 2933.1, subdivision (c), and *pre-sentence* credits thus is dicta. The court itself recognized that *Ramos* presented a "different issue" than the one before it. (*In re Reeves*, at p. 775.) That observation is consistent with the court's earlier teaching that post-conviction credit schemes have "disparate goals" and "distinct purposes" from pre-sentence credit provisions. (*People v. Buckhalter*, *supra*, 26 Cal.4th at p. 36.)

For another thing, we find nothing in the language of subdivision (c) suggesting that the particular pre-sentence confinement at issue must be specifically attributable to the violent felony offense. The statute states only that "the maximum credit that may be earned against *a period* of [pre-sentence] confinement …, following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for *any* person specified in subdivision (a)." (§ 2933.1, subd. (c), italics added.) As explained above, correctly construed, that provision limits "a violent felon's conduct credits irrespective of whether or not all his or her offenses come within section 667.5." (*People v. Ramos, supra,* 50 Cal.App.4th at p. 817.)

In short, this case offers no basis for departing from the well-accepted construction of section 2933.1, subdivision (c), adopted in *Ramos* and followed in many cases thereafter. Moreover, applying that interpretation here comports with the legislative intent behind the statute: "to provide greater protection to the public from dangerous offenders" – like defendant – "who might otherwise be paroled at an earlier date." (*People v. Garcia, supra,* 121 Cal.App.4th at p. 277.)

## SUMMARY OF CONCLUSIONS

I. The trial court properly imposed a $6,400 restitution fund fine in the rape case.

II. The trial court properly limited defendant's pre-sentence conduct credits in the weapons case.

## DISPOSITION

The judgment of conviction and the sentence imposed on defendant are affirmed.

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McAdams, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P.J.

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Duffy, J.